

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

IN RE: TESTOSTERONE REPLACEMENT
THERAPY PRODUCTS LIABILITY
LITIGATION

CASE NO. 1:14-CV-01748
MDL 2545

JUDGE MATTHEW F. KENNELLY

This Document Relates to:

All Actions

**DEFENDANTS' MOTION FOR LEAVE TO FILE NOTICE OF
SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT ON PLAINTIFFS' FAILURE-TO-WARN CLAIMS**

Defendants AbbVie Inc. and Abbott Laboratories (collectively “AbbVie”) respectfully move this Court for leave to file a notice of supplemental authority with respect to AbbVie’s Motion for Summary Judgment on Plaintiffs’ Failure-to-Warn Claims (the “FTW Motion”). (ECF Nos. 1745, 1836.) AbbVie filed the FTW Motion on February 18, 2017, and filed a reply memorandum in further support of that motion on April 10, 2017. Subsequent to those filings, on May 2, 2017, the United States Court of Appeals for the Tenth Circuit issued its decision in *Cervený v. Aventis, Inc.*, No. 16-4050, 2017 WL 1573309 (10th Cir. May 2, 2017), affirming in part and reversing in part the district court’s grant of summary judgment. In pertinent part, the Tenth Circuit held that the plaintiffs’ failure-to-warn claim based on alleged pre-pregnancy risks was preempted because the FDA’s later denial of a Citizen Petition constituted “clear evidence” that the FDA would have rejected a similar warning at the time the Plaintiff used the drug. AbbVie respectfully asks the Court to grant leave to submit notice of that opinion, attached hereto, as supplemental authority further supporting AbbVie’s FTW Motion. *See, e.g.*, ECF No. 1745 at 56, 58, 67, 69, 71 (relying upon the District Court’s decision in *Cervený v. Aventis*, 155 F. Supp. 3d 1203 (D. Utah 2016)).

Dated: May 3, 2017

By: /s/ David M. Bernick

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CERTIFICATE OF SERVICE

I, David Bernick, hereby certify that on May 3, 2017, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

/s/ David Bernick

David Bernick